

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23973  
Docket Number CL-23856

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: {  
(Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees  
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-9326) that :

(1) Carrier **failed** to adhere to the Agreement between the Parties when, on **March 19, 1980**, Mr. **S. E. Khayo** was assessed discipline of dismissal from Carrier's service, and,

(2) Carrier shall restore Mr. **S. E. Khayo** to service with all rights **unimpaired and compensate him** for all tins lost **commencing March 19, 1980**.

OPINION OF BOARD: The Claimant, Mr. **S. E. Khayo**, was hired on January 10, 1979 as an Extra Board Clerk at Cincinnati, Ohio. On March 4, 1980 the Claimant was working as a Yard Clerk at Yard "A" in Cincinnati, 7:00 AM to 3:00 PM.

At approximately 8:25 AM on March 4, 1980 Terminal Trainmaster Rhoden specifically instructed Claimant Khayo to empty the waste baskets. Claimant Khayo advised the Terminal Trainmaster that he would not perform this work. Claimant Khayo admitted his guilt as charged in the matter of refusing to empty the trash cans at Yard A.

On March 4, 1980 Mr. Khayo was sent written notice to attend an investigation on Friday, March 7, 1980. He was charged with Insubordination for refusing to comply with the instruction by Terminal Trainmaster Rhoden.

Subsequent to a hearing on March 7, 1980, Claimant Khayo was notified under date of March 19, 1980 that the discipline assessed was **dismissal from Carrier's service**.

In a letter dated March 30, 1980, Mr. Khayo's claim was submitted to the Carrier's Division Manager at Cincinnati. Division Manager's letter of April 7, 1980 denied the claim. This decision was appealed to Carrier's Director of Labor Relations in letter dated May 2, 1980. Director of Labor Relations declined the claim in a letter dated June 18, 1980.

The Claimant maintains that finding an employe "guilty" as charged does not, of and within itself, justify the assessment of the **supreme** penalty of dismissal.

The Claimant contends that the disobedience to the order to empty trash cans given by **Trainmaster Rhoden** was precipitated by the lack of knowledge concerning the railroad's chain of command on the part of Claimant **Khayo**. The Claimant testified that he was not aware that **Trainmaster Rhoden** was directly responsible for the supervision of all employes within the Consolidated **Cincinnati Terminal** area.

At the time of the incident Claimant was under direct orders from the **Yardmaster** at Yard A to check Train **Southwest #99** departing Yard A. **Mr. Khayo** was faced with a specific order from his immediate supervisor when **Trainmaster Rhoden** ordered Claimant to empty the trash cans. The Claimant maintains that the order to perform janitor work, made in the face of impending fulfillment of ordered duties of the Yard Clerk was not reasonable, fitting or proper. Further **Trainmaster Rhoden** made no attempt to make clear to Claimant the consequence of his disobedience and did not inquire of Claimant why he was disobedient.

Claimant **Khayo** testified as follows:

"Q: Mr. **Khayo**, if you had known that a yard clerk can be told to clean the yard office, would you have done so?

A: Yes, I would."

The Claimant maintains that because of a sincere lack of understanding concerning orders issued by a **Carrier Officer** which tend to countermand orders pertinent to his assigned duties, the penalty imposed on Claimant was excessive..

It is Carrier's position that this claim has not been handled in accordance with Rule 48 of the June 4, 1973 Clerk-Telegrapher Agreement and should be dismissed. The Claimant seeks relief for wage losses now which was never requested of the Carrier on the property. The Carrier maintains that when a claim is a departure from that offered on the property, the claim must be dismissed (Third Division Award Nos. 15753, 10067, 12790, 10695, 12178, and 12352).

The Carrier asserts that the Claimant was aware of the fact that **Trainmaster Rhoden** was an Officer of the Company and direct orders given by him should have been followed. Whether the duties he was ordered to perform were part of his assignment is immaterial. The Carrier maintains that an Employee should follow orders and grieve later if he feels the instructions were unjustified (Third Division Award No. 21429).

Further, the Carrier contends that if Claimant was unaware of the duties required of him, he did not make this clear at the time and there is no evidence that Claimant inquired of the **Trainmaster** as to his responsibilities.

The Carrier also maintains that the instructions given Claimant were not detrimental to his health nor safety and therefore he had no legitimate excuse for refusing to perform the work. The penalty of dismissal in cases of an Employee's refusal to perform work is not arbitrary or capricious.

The essential facts in this dispute are not in dispute. The Claimant in this matter failed to adhere to one of the basic industrial and labor relations principles. That is when an Employee is given a direct order, the Employee is "to work now and grieve later." The principle has been well established in the railroad industry (Award Nos. 4886, 8712, 11447, 15828, 16074, 16286, 18563, 20030, 20102 and 21890).

In the instant matter Claimant admitted that he refused to obey a direct order. Furthermore the Board notes Claimant's short length of tenure (14 months). Under these circumstances, the Board concludes that the disciplinary action was supported by the record; therefore the Board declines the claim.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August 1932.